AN AUTHORITY ON MINES AND MINING.

The Oasis

THE BEST WEEKLY NEWSPAPER IN ARIZONA.

SECOND SERIES, Vol. XVI, No. 8 NOGALES, ARIZONA, SATURDAY, DECEMBER 31, 1910. Whole No. 920

RECALL AND JUDICIARY.

If our farmer subscribers will take down their copy of the Constitution of the United States, which they keep ordinarily lying beside the Bible, and read it, they will see that the right of recall is the supreme function of the government, to be exercised over all its parts, the Congress exercising it over all the other parts of the government—the executive and the judiciary—and the people exercising it, every two and six years, over that epitome of all the people, men as well as women, the Congress. They will see that this principle, so loudly prated about now by those who want to be above the law, or want others to be, is applicable, according to the Constitution, to the highest as well as the lowest, to both elective and appointive officers, in every department.

They will see that the principles of representation and recall are the principles upon which the whole government is founded. They are the two principles which distinguish American government from others. Those, then, who ask that the recall provision in the State Constitution of Arizona should not apply to judges, ask that the American form of government should prove abortive, and that the Constitution of the United States should be defied in the making of the State Constitutions. —Southwestern Stockman.

The foregoing excerpt was marked in a special copy of the paper from which taken addressed to "Colonel Bird, Editor of THE OASIS, Nogales." So the inference is drawn that special attention by the editor of THE OASIS was desired and his comment invited. Which comment is given cheerfully in these lines:

While it is true that the Constitution of the United States fixes in the very fabric of government the principle of the recall, yet as outlined in the very article under consideration, its operation is subject to such limitations as are not provided at all in the proposed fundamental law for Arizona. While the Constitution of the United States established the recall, the limitations imposed upon its operation prevent its invocation lightly and without adequate cause, or through sudden gusts of popular passion such as sweep over the public mind at times.

As set forth in the article the subject of this comment "Congress exercising it (the recall) over all the other parts of the government, —the executive and the judiciary— and the people exercising it every two and six years over Congress."

But the power of recall given Congress over the executive and judiciary requires presentation of an accusation by the House, and trial of the accused by the Senate; and to convict requires an affirmative vote of two-thirds of the Senators present. The recall as framed in the constitution of Arizona gives the power of impeachment to twenty-five per cent of the electors. And the high court to try that impeachment is all the people at the polls. At the same time any other aspirant for the office may go before the people, and if his personal popularity be sufficient to give him one more vote than the impeached official receives, the latter is displaced without regard to his guilt or innocence of the offence charged. Nor does the verdict require a concurrence of two-thirds of the judges of the accused, as in the case of an impeachment before the senate, but a bare majority of one in the vote cast does the work; and the vote cast may not be a majority of the electors. In recall elections the twenty-five per centum of the voters who sign the petition will all turn out and vote, for they will have an interest in carrying out the object of the petition; while but a small part of the seventy-five per cent who do not sign may then take sufficient interest to go to the polls. In such event the twenty-five per cent who signed the petition would carry the election.

And even though the people all turned out and voted by a great majority to displace the offending official, they might not be right, and the verdict of time might be registered against them. That is one reason why the power of impeachment (the recall instanced in the article under review) vested in Congress is so hedged about with restrictions so great. That is why the House of Representatives is given the power of impeachment (the recall petition): that is why the Senate is constituted the trial court, and concurrence of two-thirds of the senators present is necessary to give judgment against an accused official: that is why the Senators when called in judgment take a solemn oath to try the case according to the law and the facts, as would a jury in a *nisi prius* court: that is one of the reasons why Senators are given terms of six years, one-third of them vacating their seats with the expiration of each term of the House of Representatives—to guard against violent ebullitions of popular sentiment perpetrating great wrongs.

The power of recall vested in Congress (impeachment and trial) has been exercised; and in one notable case there is given an excellent opportunity to contrast operation of the recall provided in tne Constitution of the United States—cited by the contemporary to whose article this reply is addressed—and the recall as provided in the constitution now submitted to the people of Arizona. The impeachment and trial of President Andrew Johnson is the case in point. That great state trial followed closely the end of the Civil War. Passion ran high and the assassination of Lincoln, whom Johnson had succeeded in the Presidency, had carried it to a still higher pitch. President Johnson and his cabinet, who had been the cabinet of President Lincoln, held one view as to the methods to be pursued for reconstruction, while Congress and the people at large held widely divergent views. Now, in the light of history, with the passions of that time buried with the men in whose breasts they raged, it is conceded and admitted on all sides that President Johnson was endeavoring honestly and in good faith to carry out a reconstruction policy that would have been Lincoln's had he lived; and that had he been convicted by the Senate and removed from his high office, it would have been perpetration of an irreparable wrong. Johnson had not the genius for popular leadership that had Lincoln, nor had he the tact, and gentleness and patience that had the martyred President to lead through difficult situations. By stubborn persistence Johnson attempted to force what Lincoln would have accomplished by tactful management; and the people and Congress rebelled.

The House of Representatives adopted resolutions of impeachment, and sent to the Senate seven of its ablest members to arraign the President at the bar of that august tribunal, alleging high crimes and misdemeanors. At the time appointed the Chief Justice of the United States, Salmon P. Chase, appeared in the Senate and presided at the trial. The seven representatives sent by the House conducted the prosecution, and the accused President was represented by eminent and able counsel. When the evidence had been closed and submitted the Senators cast their votes for or against conviction and the impeachment failed for lack of one vote. All the democrats voted against conviction, and with them voted two republican senators: James R. Doolittle of Wisconsin and Edmund Ross of Kansas. Had either of those Senators voting upon his oaths and as his conscience dictated, voted the other way, President Johnson would have descended from his high estate, and another would have filled out the term.

Today the verdict of history is that Ross and Doolittle were right, and that had either gone with the majority and given the vote that would have constituted the two-thirds of the senators present required by the Constitution, the result would have been perpetration of a crime which would have stained the escutcheon of the Great Republic.

But the people were incensed. Had there been in the Constitution of the United States such a provision for recall such as that proposed in the Constitution of Arizona, there would have been framed and filed speedily a petition signed by more than twenty five per cent of the voters of the country, and in the election that would have followed, President Johnson would have been thrown out of office by an overwhelming popular majority, and very likely it would have reached the two-thirds that failed in the Senate.

The offending republican senators, Ross and Doolittle, were visited with universal execration. Abuse, reproach and contumely were heaped upon them from the press, the pulpit and the hustings; and when their terms of office expired, a couple of years later, the people of Kansas and Wisconsin invoked the recall provided by the Constitution of the United States, cited in the article under review, and displaced them in the "seats of the mighty." Yet Doolittle was one of the great men of his time. He was one of the great leaders in the United States Senate. Down to the time of that one vote against conviction of President Johnson the people of Wisconsin were proud of him, and he was a colossal figure of national import. That one vote cast him his seat in the Senate and closed to him the door to the public service he was fitted so well to render. Today could the people of Wisconsin remove from their history that shameful record they would do so gladly.

THE OASIS does not admit for a moment that there is any truth in or any foundation for the oft repeated allegation of the proponents of the recall that its opponents "are afraid to trust the people." That allegation is easy to make, and it is flung about recklessly by those radicals who have come to the front in the present situation. But the opponents of the recall recognize the fact that popular judgment is of slow growth and does not ripen in a day. The far sighted and far seeing statesman, whose commanding position gives him peculiar advantages in surveying situations and discerning obstacles not visible to the masses, seems too slow in execution of his sworn duty; and popular clamor will not give him at times the leeway necessary for development of a correct course of policy. In the early stages of the Civil War, before they had taken his full measure, the people had not the faith in Abraham Lincoln that they learned to have later; and could there have been invoked the recall as now presented he would have been displaced from the Presidency and some one installed who would have failed in the great work Lincoln accomplished in saving the Union.

In that great conflict there were periods in which the people of several important states were ripe to recall their governors and legislatures and vote by the initiative could they have done so to withdraw their troops from the field, which would have been disastrous to the Union cause. But after Gettysburg and Vicksburg nothing in the world could have induced them to relinquish their determination to see President Lincoln through in carrying out the war policy he had planned; and when in November, 1864, there was invoked the recall provided in the Constitution, cited by the Stockman, the people would have nothing of it. McClellan, the recall candidate, carried only three states —Kentucky, New Jersey and Delaware—and he carried those states by very scant majorities, while the majorities given Mr. Lincoln in the remaining twenty-one states voting at that election were tremendous. The people had been given time to reach a correct and abiding judgment, which they had not done in 1862-3, until the Confederacy reached its "high tide."

Now, in this inquiry the proposed recall of the judiciary is reached. THE OASIS maintains, and with it all opponents of the proposition, that more than all other branches of the government the judges should be exposed the least to swift and sudden removal. All authorities who have treated the subject have declared for the independence and stability of the judiciary. Even Thomas Jefferson, who distrusted the federal courts in his later years thought in his early life that the judiciary should be appointive and hold office during good behavior. In

(continued on page 4)